IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.52274 M OF 2006

DATE OF DECISION: SEPTEMBER 07, 2007

Meenu

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. G. S. Bhatia, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Petitioner, Meenu, complains against the calendra filed against her vide DDR No.11 dated 6.8.2006 under Section 182 IPC. Her grievance is that this calendra has been lodged at the instance of Sanjiv Goyal, respondent No., who is brother of her husband.

A long story has been narrated in regard to the background leading to matrimonial dispute between the petitioner and her husband. To give resume of facts, the petitioner, who married one Subir Goyal son of Late Subhash Chander Goyal, on 16.2.1997 has made a complaint regarding demand of dowry etc. These facts need not to be noticed in detail as being not relevant to decide the main controversy relating to the filing of calendra against her. The petitioner and her husband had stayed for sometime `in Moscow but had later

returned to India and started residing with respondent No.4. The petitioner complaints that respondent No.4 used filthy language against her besides making certain other indecent proposals about which he complained to her husband and mother-in-law but to no effect. She had subsequently shifted her resident at Ludhiana. Still, as per the petitioner, respondent No.4 interfered in her life and even got a divorce petition drafted, which the petitioner refused to sign. She had ultimately filed an FIR on 4.11.2005 under Sections 406, 498A IPC. She has made a grievance about the grant of anticipatory bail to respondent No.4, to my mind, not with much justification. Reference is also made to other threats advanced to her and the complaints she happened to file, which are again not much relevant to decide the present prayer made in the petition.

What is relevant to notice is that husband of the petitioner has gone to United States of America and according to her, the police otherwise has made efforts to hush-up the investigation in regard to the FIR lodged by her. In this background, the petitioner claims to have represented to Senior Superintendent of Police, Ludhiana, for providing her police protection. She has also complained against respondent No.4 and her mother-in-law for clandestine use of Sutlej Club membership card No.726, which in fact is on the name of Subhash Goyal, who has died 9 years ago. In this complaint, it is alleged that respondent No.4 and his mother, by impersonating as Subhash Goyal, are enjoying the facilities available to life members of Sutlej Club and, thus, have forged and fabricated the documents in the name of a dead person by using and enjoying the facilities. The petitioner herself concedes that she has sent a

representation to this effect to S.H.O. to enquire into the matter and for registration of an FIR against respondent No.4 and his mother for cheating and defrauding Sutlej Club by forging and fabricating the documents. The copy of the complaint is annexed with the petition as Annexure P-12. It is then claimed that by exerting his influence, respondent No.4 has managed the cancellation of this FIR and has got initiated proceedings under Section 182 I.P.C. against the present petitioner. It is in this background that the petitioner has sought quashing of this calendra filed by the police under Section 182 IPC.

Mr.G.S.Bhatia, appearing for the petitioner, submits that this calendra could not have been filed by the S.H.O. as the complaint was addressed to S.S.P. Rebutting the same, the State counsel draws my attention to Annexure P-12, which is the complaint on the basis of which the FIR is registered. A perusal of Annexure P-12 would show that it is addressed to S.H.O., Police Station Division No.5, Ludhiana. Similar is the averment in Para 31 of the petition where it is stated by the petitioner herself that “a complaint was made by the present petitioner to the S.H.O., P.S. Division No.8 (should be `5'), Ludhiana alongwith copy to S.S.P.” Conceded position, thus, is that this complaint was addressed to S.H.O. No fault can, thus, be found in the S.H.O. filing this calendra in terms of Section 195 Cr.P.C.

Faced with this situation, Mr.Bhatia submits that the enquiry was not properly conducted and the petitioner was also not joined. As per the counsel, the main witnesses cited in support of the calendra are the accused themselves, which can not be justified.

Except for baldly asserting that this calendra has been lodged under the influence of respondent No.4, nothing substantial could be pointed out in support of the same. It is further pointed out that the petitioner has now filed a complaint under Sections 419, 420, 467, 468, 471, 34 IPC before Ilaqa Judicial Magistrate Ist Class, Ludhiana, in regard to the same issue. Copy of this complaint is now placed on record through miscellaneous application filed by the petitioner. It is further disclosed that the Magistrate has permitted the petitioner to lead preliminary evidence in support of the complaint. In this background, it is urged that the calendra is required to be quashed.

The counsel has made reference to number of judgments. He would first refer to ***Sadhu Singh Vs. State of Punjab and others,*** 2003 (2) R.C.R. (Criminal) 803. In my view, the ratio in this case would not apply to the facts of the present case. In this case, after filing of the cancellation report, the application was filed under Section 190(1) of the Code of Criminal Procedure, which was allowed by the Magistrate and accused summoned. In this background, the calendra was quashed saying that it could not be said that the complaint made by the petitioner in the said case was false. No such consideration arise in the present case. Mere filing of complaint can not mean that cancellation report, after investigation, was false. The counsel would then refer to the case of ***Rajesh Kumar Sah Vs. State of Jharkhand,*** 2005 Cri.L.J. 1554. In this case, the proceedings initiated under Sections 182 and 211 IPC were set-aside basically on the ground that the final report submitted by

the police was accepted without any notice to the complainant and his subsequent protest petition was also not registered. The action of the Magistrate in taking cognizance for an offence under Sections 182 and 211 IPC was held not sustainable in law in the background of this position prevailing in the said case. Such is not the position in the present case. In ***Munna Lal Vs. State of U.P. And others,*** 2004 Cri.L.J. 1527, the proceedings initiated were held to be pre-mature and hence, liable to be quashed as the final report for release of the accused due to the allegation being false was not submitted. The ratio of this case would also not in any manner apply to the instant case. Similarly, the case of ***Ramesh Chand Vs. State of Haryana,*** 2006 (4) R.C.R. (Criminal) 718, would also not apply to the facts of the present case as the calendra was quashed by noticing that Magistrate had summoned the accused on the basis of a complaint concerning the same allegations. In ***State of Punjab Vs. Brij Lal Palta,*** AIR 1969 Supreme Court 355, as referred by counsel for the petitioner, FIR as well as complaint was lodged before the Magistrate concerning the same allegation. The allegation was found false by the police but the complaint was still pending and under these circumstances, it was said that Magistrate could not take cognizance of the offences under Section 182 IPC etc. without prior compliance with the provisions of Section 195 (1)(b) Crl.P.C. In this case the complaint has been filed after the police investigation, finding the allegation in the complaint to be false. Hence, this case is also not applicable to the facts of the present case. The other judgments reported as ***Davinder Singh Vs. State of Punjab,*** 1991

(1) R.C.R. (Criminal) 149, ***Malkiat Singh Vs. State of Haryana***, 1999 (2) R.C.R. (Criminal) 10 and ***Harbans Singh Vs. State of Punjab and anr.,*** 1991 (3) R.C.R. (Criminal) 113, appear to have just been pressed before me without much justification. In all these cases, the issue was whether the calendra could be filed by any person to whom the complaint was not made, which is not the factual position in this case. As already noticed, the complaint in this case was made to S.H.O., who has lodged this calendra and hence, these judgments would not have any bearing on the present case. The ratio in the case of ***Davinder Vs. State of Haryana,*** 1998 (2) R.C.R. (Criminal) 782 would also not apply to the facts of the case as in this case, no FIR was registered on the basis of a complaint but still the calendra was filed. Only enquiry was conducted, which again is not the position in the present case.

There is, thus, no merit in the petition and the same is dismissed.

September 07, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**